



(916) 323-7715

November 20, 1984

Dear ...

This is in response to your October 24, 1984, letter to this Board wherein you asked whether the homeowners' exemption is available under the following circumstances:

- (1) Mr. G states that he is a Marine Engineer domiciled in California for the purpose of sailing on foreign voyages out of the MEBA (Union Hall) in San Francisco.
- (2) Mr. G states also that he and Mrs. G are "legal" residents of Alaska: they are registered to vote in Alaska (they vote by absentee ballot), he has an Alaskan driver's license, and he owns property in Alaska. (He has not been in Alaska for several years, however.)
- (3) Mrs. G has been receiving chemotherapy treatments in Concord, California for the last couple of years and has been back and forth to Alaska several times. She was living at their home in O' California on March 1, 1984.

As you are aware, Article XIII, Section 3(k) of the Constitution exempts \$7,000 of the full value of a dwelling when occupied by an owner as his principal residence. Section 218 provides that the exemption does not extend to property which is rented, vacant, under construction on the lien date, or which is a vacation or secondary home of the owner or owners.

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As to "principal residence", we have considered such to be equivalent to domicile, that place where a person has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning, as indicated in the May 9, 1975, letter from Mr. James Williams to Riverside County Assessor Sealey, copy enclosed. Important as to a determination of principal residence or domicile are not only where an owner or owners of property reside during the course of a year but also matters such as filing for purposes of state income taxation, voter registration, vehicle registration, etc. See, for example, G20 of the March 23, 1982, Letter to Assessors No. 82/50, 1982 Homeowners' Exemption - Questions and Answers.

In this instance, assuming that the G_____ lived at their home in O_____ at times preceding and on the March 1, 1984, lien date, the above-mentioned and other circumstances indicate that the G_____ principal place of residence or domicile is other than in California:

- (1) While Mr. G_____ might be "domiciled" in California for employment purposes, as between himself and his employer, the G_____, do not appear to be domiciled in California for state-income tax purposes, as between them and the State. According to the Franchise Tax Board, the G_____ last filed a California income tax return for the 1982 calendar year as non-residents. See Franchise Tax Board Report and 1982 Form 540NR (top), copies also enclosed. Franchise Tax Board filing instructions state that residents must file Form 540 or Form 540A, and that part year residents and nonresidents must file Form 540NR.
- (2) While it could be claimed that in filing Form 540NR in 1982, the G_____s were part year residents rather than nonresidents, as indicated in (1), above, the G_____s have not filed a California income tax return for the 1983 calendar year. Such indicates that they do not claim to be California residents or part-time residents in 1983.
- (3) Consistent with (1) and (2), above, are Mr. G_____s statements that he and Mrs. G_____ are "legal" residents of Alaska, that they are registered to vote in Alaska, and that he has an Alaskan driver's license, all indicia that the G_____s' principal place of residence or domicile is not in California.

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Although the G_____ 1984 Ford vehicle is registered in California, such is of slight significance when considered in conjunction with (2) and (3), above.

As to Mr. G_____ being away from California in the course of his employment, such is not an impediment to receipt of the exemption under the proper circumstances, for example, where the claimant returns to his residence after being away, files for purposes of state income taxation as a resident, maintains a California voters' registration, registers his vehicle in California, etc. See, for example, G18 of the March 23, 1982, Letter to Assessors No. 82/50.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr -

Enclosure

bc: Mr. Gordon P. Adelman
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Legal Section